(5)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.

W.P. No. 4552/98

PETITIONER

Dr. Rajendra Dubey,
S/o Shri S.D. Dubey,
aged about 54 years,
r/o Devendra Nagar,
Raipur, district
Raipur, M.P.

V/s

RESPONDENTS

1. State of M.P.
Through : The Principal
Secretary, Revenue Deptt,
Vallabh Bhavan, Bhopal, M.P.

2. The Director, Public Relations
Department, Bhopal, M.P.

3. The Commissioner, Raipur
Division, Raipur, M.P.

4. The Collector, Raipur,
District Raipur, M.P.

5. The Nazul Officer, Raipur,
district Raipur, M.P.

6. The Chief Executive,
Daily Samvet Shikher,
5, South Avenue Choubey
Colony, Raipur, district
Raipur, M.P.

Surendra Kumar Khare
S. K. Khare
Oath Commissioner JBP.

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

DFR (198)

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No.4552 of 1998

Dr. Rajendra Dubey, S/o. Shri S.D. Dubey, Raipur.

- Vs –

State of M.P. through the Principal Secretary, Revenue Department, Vallabh Bhawan, Bhopal (M.P.).

For the Petitioner	:	Shri P. Diwakar, Advocate
For Respondents 1 to 5	:	Dr.N.K. Shukla, Addl. Advocate General with Shri Gautham Bhaduri, Govt. Advocate.
For Respondent No.6	:	Shri Vivek Sibbal with Shri B.P. Sharma, Advocate.
Order passed, Signed and Dated	:	on 15-03-2002

By order

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No.4552 of 1998

Dr.Rajendra Dubey

-Vs-

State of M.P. & others

For the Petitioner: : Shri P. Diwakar, Advocate.

For respondents No.1 to 5 : Dr.N.K.Shukla, Addl.A.G. with Shri G.Bhaduri, Govt. Advocate

For respondent No.6 : Shri Vivek Sibbal with Shri B.P.Sharma, Advocate.

ORDER

(15.03.2002)

By this writ petition filed under Article 226/227 of the Constitution of India, petitioner prays for quashing of the allotment order dated 05.8.1994 (Annexure P/1) issued in favour of respondent no.6 and the impugned order of advance possession dated 22.8.1994 (Annexure P-2). It is further prayed that respondents 1 to 5 be directed to issue allotment order with

delivery of possession in respect of plot in dispute, in favour of the present petitioner.

(2) Petitioner submits that he is the Secretary of Yug Chetna Publication, Raipur which is the Unit of Yug Dharma and applied for allotment of land (Annexure P-3) admeasuring 417138 sq.ft. situated at Block no.9, plot no.1 x 1 at Rajbandha Talab, Civil Station, Raipur. It is submitted that there was Press Complex categorized by the State Government and the local Authority and various parts thereof have been allotted to different pressmen. It is submitted that on receipt of the application in the office of respondent no.4/Collector, Raipur, no objection certificates were demanded and petitioner obtained No Objection Certificates dated 9.7.1990 and 16.7.1990 (Annexures P-4 and P-5) from the concerned authorities. It is further submitted that while petitioner's application was under process, respondent no.6 made an application to the then Chief Minister for allotment of land for press complex vide letter dt.4.8.90 (Annexure P.10). Then the said letter was forwarded by Chief Minister's Secretariat. The matter was thereafter processed.

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(3) In para 5.8 of the writ petition, it is stated "that the petitioner was absolutely innocent and ignorant about the foul play at the hands of the respondent ignited by respondent no.6 and generated through/by the then Chief Minister, on his pursuit to claim the allotment of the land for which he had lawfully applied on the basis of his entitlement flowing from the long established publication of the Yugdharma newspaper and when no response is flown from the end of respondent, the present petitioner started approaching respondents 1 to 5 independently demanding all the reasons for delay in the process of allotment in his favour. The petitioner submitted the latest reminder/application dated 26.2.1997 to respondent No.5 vide Annexure P.14".

Grounds urged by the petitioner are that hostile discrimination has been adopted and the petitioner has been kept in darkness and that the allotment has been made illegally and contrary to law.

(4) Dr.N.K. Shukla, Addl. Advocate General for the State submits that so far as allegations made against the then Chief Minister are concerned, that Chief Minister has not been impleaded as party respondent and as such, in the absence of he

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being joined as party respondent, the allegations made against him do not require any adjudication. Even otherwise what has been alleged is that the office of the then Chief Minister's Secretariat forwarded the petitioner's letter. Thereafter respondent no.6 made an application. Shri Shukla submits that it has become a common practice that the letters are addressed to Chief Minister and other dignitaries, which is not at all healthy. However, once such letters are received, they are required to be dealt with by the Secretariat. It is for the respective authorities to take appropriate steps.

(5) Dr. N.K. Shukla,. Learned Additional Advocate General further submits that the main question is of delay, the allotment has been made on 5.08.1994 and the petitioner submitted his letter dated 26.02.1997 and this writ petition has been filed on 19.9.1998 that is after a lapse of considerable period. No explanation for such delay has been given and as such this petition suffers from delay and laches.

(6) Dr. Shukla, further submits that according to the petitioner's own showing the land has since been allotted construction is going on, and now when rights have accrued in

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favour of other allottees, civil suit is appropriate remedy for petitioner in view of the disputed questions of fact. He further submits that this petition has been filed by the petitioner in his individual capacity, but not on behalf of Yug Chetna Prakashan, the petitioner wants the land for his individual purpose rather than as owner of the Press, therefore, no cause of action does arise in this petition.

(7) Dr. Shukla, learned Addl. Govt. Advocate further submits that respondents 1 to 5 have filed return in which it has been stated that Policy regarding allotment has been taken that no land exceeding 43360 sq.ft. could be allotted to any press, as such the petitioner is not entitled to any land exceeding 43360 sq.ft. He submits that total land available and earmarked is 834276 sq.ft. whereas petitioner has applied for 417138 sq.ft. which is more than half of the total land available.

(8) Dr. Shukla, Counsel for respondents 1 to 5 further submits that while processing the case of the petitioner, he was asked to submit registration certificate of his establishment and the petitioner was also asked to furnish the details as to the quantum of bank balance of the petitioner vide order sheet

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dated 14.11.1990 (Annexure R-2), but he did not give any such information. It is also submitted that he did not indicate whether the institution Yug Chetna Prakashan was registered anywhere and in absence of such information the case being incomplete was returned by the Government vide letter dated 20.10.1995 (Annexure R 4). The respondents submit that the petitioner has not disclosed whether the Yug Chetna Prakashan is a registered institution and as the petition filed in individual capacity it seems that the petitioner wants the land in his individual capacity rather than as owner of the Press. The respondents have also filed additional return in which it has been stated that in view of Memo dated 30.06.1991 (Annexure R 5) it was made clear that no land exceeding 43360 sq.fts could be allotted to any Press. It is submitted that thereafter, the petitioner preferred application for allotment of land, a case was registered by the Nazul Officer and the proceedings were going on and from the order sheets vide annexure R-6 it is clear that petitioner was asked to furnish the details vide order dated 3.8.1990 and when the matter was taken up on 14.8.1990, petitioner sought time and on 25.8.1990 when the matter was taken up, petitioner was again granted time to furnish the details in proforma. On 18.3.1991 the matter was referred to the Commissioner, Raipur,

for being forwarded to the Secretary, Revenue Department, for onward action. The matter was received back by the Nazul Officer on 1.1.1996 from the State Government with a note that the application should be preferred in prescribed format. On 25.1.1997 the petitioner wanted progress of the case vide annexure R 7 and on the same letter it was informed to him that State Government had directed that application should be in prescribed proforma. On 26.2.1997 the petitioner gave a letter asking for information as to whether the land sought by the petitioner has been allotted to respondent No. 6 and if it has been allotted to respondent No. 6 then the application in prescribed proforma was not required. Learned counsel for the respondents submit that there is no right as such available to the petitioner to claim any relief in this petition.

(9) Heard counsel for the parties and perused the record.

(10) A perusal of the order sheets (Annexure R-6) show that the petitioner himself was not interested in furnishing the details as required by the Nazul Officer, in prescribed proforma. On petitioner's own showing he wrote a letter on 26.2.97(Annexure-14) to the Nazul Officer to ascertain as to whether the land

applied by him had been allotted to respondent no.6 and if the land had been allotted to respondent no.6/Dainik Samvet Shiker, then the application in prescribed format was not required. The petitioner thereafter did not do anything. Even no notice of demand of justice was served. It is further stated that the order of allotment was passed on 5.8.1994, possession was delivered by 22.8.1994 petitioner has submitted his letter on 26.2.1997 and this petition has been filed on 19.9.1998 that is after lapse of long time and no explanation has been given for such long delay. It is also pointed out that during the intervening period, five institutions have also been allotted land in block no.9 of the press complex, but none of them have been impleaded as parties. Though the parties i.e. State through the Principal Secretary, Revenue Dept. Bhopal; the Director, Public Relations Dept. Bhopal; the Commissioner, Raipur, have been joined, but no notice of demand of justice has been served. Even respondent No.5 the Nazul Officer and respondent no.6, the Chief Executive, Daily Samvet Shikher, Raipur were not served the notice of demand of justice.

(11) Present petition is in the personal capacity and not as Secretary of Yugchetan Prakashan. It is pointed out that even in

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this application, prayer for allotment of the land has been made on behalf of the Yug Chetna Prakashan and it was not for the petitioner. Respondents have filed order sheets containing the proceedings recorded by the Nazul Officer. The order sheet dated 3.8.90 has been referred to where certain information was asked as to "whether the Yugdharm was registered, whether they have their own sources" It is stated that this information was never submitted and again time was sought. Then the matter was referred to the Dept. of Revenue, State Government of M.P. and the Government has directed that the information in proforma be called for. From the order sheet dated 1.1.1996 it is clear that the applicant has been informed to furnish the details in prescribed proforma -'A' In the order sheet dated 20.3.1997, it was noted that the case of the petitioner was forwarded and considered and accordingly, the petitioner was informed the decision of the Revenue Department, State of M.P. for allotment of land measuring 43360 in Block No.9, Plot No. 1/1. It is also pointed out that there was a policy and according to that policy it was only 43360 sq. ft. which could be allotted whereas the claim of petitioner was for 417000 sq.ft. of land which is more than half of the total land available and earmarked.

(12) In support of his contention, learned counsel for the respondents relied on a judgment of Supreme Court reported in (1986) 4 SCC 566 (State of M.P. –v- Nandlal Jaiswal and others) wherein the Apex Court has held as follows:

> "The power of the High Court to issue an appropriate writ under article 226 is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. Where there is inordinate and unexplained delay and third party rights are created in the intervening period the High Court would decline to interfere even if the State action complained of is unconstitutional or illegal because the Courts interference is likely to cause confusion and public inconvenience and bring in new injustices. However, there may be a few cases, where the demand of justice is so compelling that the High Court would be inclined to interfere inspite of delay or creation of third party rights. Ultimately, it would be a matter within the discretion of the Court. Ex-hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."

Regarding delay and laches, learned counsel for the petitioner relied on a judgment of Supreme Court reported in (1979) 3 SCC 489 (Ramana Dayaram Shetty – Vs – International

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Airport Authority of India and Others . The relevant portion of the said judgment reads as under:

> "Moreover the writ petition was filed by the appellant more than 5 months after the acceptance of the tender of respondents 4 and during this period, respondents 4 incurred considerable expenditure aggregating to about Rs.1,25,000/- in making arrangements for putting up the restaurant and the snack bars and in fact set up the snack bars and started running the same. It would now be most inequitous to set aside the contracts of respondents 4 at the instances of the appellant. The position would have been different if the appellant had filed the writ petition immediately after the acceptance of the tender of respondents 4 but the appellant allowed a period of over 5 months to elapse during which respondents 4 altered their position. We are, therefore, of the view that this is not a fit case in which we should interfere and grant relief to the appellant in the exercise of our discretion under Articles 226 of the Constitution."
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> (Emphasis supplied)

(13) It has already been noted that although some allegations have been made regarding conduct and involvement of the then Chief Minister, but as the Chief Minister has not been joined as party respondent and even notice for demand of justice has not been served and no material regarding those allegations have

come on record, detailed discussion and adjudication on this aspect is not required. Even otherwise, it is pointed out that the office of Chief Minister's Secretariat has forwarded the petitioner's letter and thereafter respondent no.6 himself submitted the application in prescribed proforma and the matter was processed and the State has informed that the land has been allotted as per the policy which they had and that policy was in existence for about 18 years, which was made known to every body. The petitioner ought to have made suitable application in prescribed proforma this petition is also not on behalf of the organization, but on behalf of an individual.

(14) Dr.N.K.Shukla, counsel for the State submitted that the State has no malice towards any person, now the new State of Chhattisgarh has been formed and the State Government of Chattisgarh has no malice. Petitioner, if so desired, may make suitable application in prescribed proforma. In case such an application is made, then the State shall consider the same afresh on its own merits in accordance with law.

In view of what has been stated above, this petition is disposed of. No costs.

Sd/-
Fakhruddin
Judge

/Rao/